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No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

CHARLES L. BICKERSTAFF,

Petitioner,

v.

STATE OF ILLINOIS,

Respondent.

On Petition For A Writ Of Certiorari To The Illinois Appellate Court, Second District

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In the 2008 Illinois general election for Lee County State's Attorney, Henry S. Dixon campaigned against the incumbent, Paul Whitcombe. The instant case against Charles Bickerstaff was pending pretrial at the time and when the trial court granted a suppression of Bickerstaff's diaries as beyond the search warrant, Dixon seized on the case in his campaign repeatedly claiming Whitcombe was mishandling this specific case. He repeatedly stated that because of Whitcombe's failures, "critical" evidence of Bickerstaff's "criminal sexual behavior" could not be used and that Whitcombe could not handle these "tough" cases. He posted on his campaign website similar commentary about the Bickerstaff case. He later also commented on a motion for change of venue based on his campaign statements, as an attempt by Bickerstaff's attorney to bolster Whitcombe's campaign. Upon his election, Dixon immediately increased the primary charges from four to twelve. The Defendant filed a timely, pretrial motion to disqualify Dixon but was denied.

The question presented is whether the trial court's failure to disqualify Dixon violated the Due Process Clause of the Fourteenth Amendment.

PARTIES TO THE PROCEEDING

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Charles L. Bickerstaff, respectfully submits this Petition for a Writ of Certiorari to review the judgment of the Circuit Court of Lee County, in the Fifteenth Judicial Circuit, Illinois, and the judgment of the Illinois Appellate Court, Second District affirming the conviction of Charles L. Bickerstaff. The Illinois Supreme Court refused leave to appeal.

OPINIONS BELOW

The opinion of the Illinois Appellate Court, Second District is reported as *People v. Bickerstaff*, 403 Ill.App.3d 347, ___ N.E.2d ___ (2010WL3063184) (2nd Dist. 2010).

JURISDICTION

The Illinois Supreme Court entered an order refusing leave to appeal on November 24, 2010. (App. 26.) The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the U.S. Constitution provides, in relevant part:

"No State shall . . . deprive any person of life, liberty, or property, without due process of law. . . ." (U.S. Constitution, Amendment XIV, §1.)

STATEMENT

On April 27, 2007, the Defendant herein, Charles Bickerstaff, was charged with the equivalent of statutory rape, namely four counts of criminal sexual assault of a minor and four lesser included counts of criminal sexual abuse, each alleged to have occurred on four different occasions. The four more serious charges contained the aggravating element alleging that Bickerstaff, at the time of the charged conduct, held a position of trust, authority or supervision in relation to the minor, as "Scoutmaster/Executive Director of Boy Scouts of America."

As the case progressed, the defense filed a motion to suppress the use of Bickerstaff's daily journals, which were his handwritten diaries, which had been obtained through a search warrant of his home. The warrant had been limited by the issuing Judge, mirroring an affidavit by the minor, to "DVDs, magazines, and photos on the computer of children in a state of undress." The Court ruled in favor of the defense and suppressed the journals.

This suppression order was to become a focal point in a political campaign. At the same time that the Bickerstaff case was pending in the Lee County

Circuit Court, the 2008 election cycle was in full swing. Included in the Illinois county offices up for election in November 2008 was that of the office of State's Attorney. The incumbent State's Attorney and prosecutor in the Bickerstaff case was Paul Whitcombe. His challenger was Henry S. Dixon. Shortly after the Court ruled suppressing the journals in the Bickerstaff case, Dixon seized upon the Bickerstaff case in his campaign and thereafter often publicly named the Bickerstaff case as an example of a case which he claimed was being mishandled by Whitcombe.

His campaign created a political website which he entitled "paulwhitcombe.com" (the name of his opponent), onto which he displayed the title in bold **"People v. Bickerstaff"** and under which Dixon stated:

> "In the pending case, People v. Bickerstaff, 2007 CF 179, the trial judge ruled that certain critical evidence was not admissible because the search warrant failed to include the notebooks, handwritten journals, diaries, or written documents evidencing criminal sexual behavior."

The text then accused the incumbent State's Attorney of doing a "slipshod" job of drafting the search warrant. The website also contained replica newspaper headlines stating **"Judge tosses out sex journals" and "Former Boy Scout leader to have next hearing September 4."**

The *Dixon Telegraph*, the largest circulation newspaper in Lee County, picked up the information Henry Dixon posted on his website under the headline **"Website slams Whitcombe's administration."** In this newspaper article, it stated that Dixon "offered documentation to support his campaign statements that Whitcombe has 'failed to prosecute, time and again, some of the toughest cases.'" According to the article, Dixon stated that among those cases was:

> "Charles Bickerstaff, the 57 year old Boy Scout administrator accused of multiple rapes of an Ogle County boy at Bickerstaff's Dixon home. Defense attorneys recently won a major victory when a judge ordered a series of potentially damning journals tossed from state's evidence because the search of Bickerstaff's home went beyond the scope of the search warrant Whitcombe drafted. 'It was not a botched search, it was a botched search warrant,' Dixon said in an interview."

In addition to Henry Dixon's website and the media coverage of it, Dixon had made numerous extrajudicial public statements commenting on the Bickerstaff case during the course of his political campaign. These comments were made before groups, associations and gatherings in Lee County during the campaign season. These included a speech at the Dixon Theater on October 8, 2008, at a public gathering organized by the Lee County Bar Association as a candidate's debate. This debate was before an audience of 200 attendees and was also broadcast on

WIXN Radio 1460 AM and 101.7 FM throughout Lee County. In this public speech Dixon had stated:

> "I will thoughtfully draft correct and correctly draft court documents, such as search warrants, complaints for search warrants which will give the officers the latitude they need and they are entitled to have. Mr. Whitcombe doesn't. And I give you an example of People v. Bickerstaff, 07 CF 179, in which the Telegraph reported it was a botched search."

To this Paul Whitcombe had responded "Mr. Dixon knows very well, I cannot comment on pending cases."

This use by Henry Dixon of the pending Bickerstaff case was again picked up by the *Dixon Telegraph* the following day under the headline "Candidates hash it out." In it, the newspaper reported:

> "Among a handful of others, Dixon pointed to the Charles L. Bickerstaff case, a high profile sexual assault case that has yet to go to trial because the Judge recently tossed a cache of state's evidence seized during an unconstitutional search of Bickerstaff's Dixon home. Dixon said 'a botched search warrant' was the cause for delay."

On October 20, 2008, the defense filed a motion for change of venue based on the pretrial publicity generated by Henry Dixon. On October 22 and again on October 28, 2008, Dixon was quoted extensively by the *Dixon Telegraph* disputing the claims made in the motion. In the first article the newspaper reported:

> "Throughout his campaign, Dixon has invoked the name 'Charles Bickerstaff' perhaps more than any other, as a case for which voters must hold Paul Whitcombe accountable."

A week later a second article appeared in the *Dixon Telegraph* headlined **"Dixon blasts venue motion"** in which it reported:

> "State's attorney candidate Henry Dixon has accused [defense] attorney Rolfe Ehrmann of publicizing a high profile case in attempt to bolster fellow Republican and incumbent prosecutor Paul Whitcombe."

In the same newspaper article the defense attorney was quoted as stating:

> "This is a very serious Class X felony, and I'm going to represent my client. . . . I have no comment on the politics. As a defense attorney, I don't care whether people vote for Henry or for Paul."

In the November election, Henry S. Dixon won and became the State's Attorney of Lee County and on December 1, 2008 assumed the office of State's Attorney. Soon thereafter he filed an amended information increasing the number of counts against Bickerstaff from four counts of criminal sexual assault to twelve with an additional twelve lesser included counts of aggravated criminal sexual abuse, all of which were alleged to have occurred on the original four occasions underlying the original complaint.

Thereafter the motion for change of venue was withdrawn by the defense and the Defendant filed a Motion to Disqualify State's Attorney alleging the same grounds that Henry S. Dixon had conducted a campaign in Lee County using the name of Charles Bickerstaff as a "political device to obtain office and as an object of scorn and ridicule as if Bickerstaff were in fact guilty." At a hearing no testimony was presented on the motion because the State conceded the factual allegations and the documentation concerning the Dixon campaign. The evidence also showed that as of the date of the hearing, February 11, 2009, the same campaign website was still in existence and still broadcasting allegations against Charles Bickerstaff. Henry Dixon offered no explanation and at the request of the trial judge, Dixon removed that portion of the campaign website.

The Motion to Disqualify State's Attorney was based in part on the Due Process Clause of the Fourteenth Amendment of the United States Constitution. In his brief and in oral argument the Defendant cited numerous federal cases including the then pending case before the United States Supreme Court in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. ___ (2009). The trial court denied the motion without specific comment on the Constitutional issue raised. Following jury trial Bickerstaff was convicted of eleven of the twelve more serious counts and all others were dismissed. Because of consecutive sentencing triggered by the offenses, Bickerstaff received a total sentence of 80 years.

In the Appellate Court, the defense argued in support of its Motion to Disqualify Dixon, just as it had in the trial court, relying on the Due Process Clause and arguing that even without a showing of prejudice to a jury, pretrial extrajudicial publicity by the prosecutor before and after his election should warrant disqualification of that prosecutor. The defense argued that a candidate for State's Attorney should not be permitted in a campaign to do anything adversely affecting a pending criminal proceeding and then a day later, once elected, be absolved of wrongdoing while the defendant must be stuck with the consequences as collateral damage. The defense however was unable to convince the Appellate Court, just as it was unable to convince the trial court, that the issue was one of political bias, interest and partiality of a prosecutor and not one of prejudice to the jury as argued by the State. The Appellate Court therefore was critical of the defense for not including a transcript of *voir dire* thus leaving it "unable to evaluate the effect of pretrial publicity, or *voir dire* questioning, on defendant's jury." The Illinois Supreme Court refused leave to appeal. This Petition timely follows.

REASONS FOR GRANTING THE PETITION

CAMPAIGN CONDUCT OF AN ELECTED PROSECUTOR USING THE DEFENDANT'S CASE FOR POLITICAL PURPOSES MADE THE TRIAL COURT'S FAILURE TO DISQUALIFY HIM A VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT

This Court should grant certiorari to clarify the circumstances in which due process requires the disqualification of an elected prosecutor from the prosecution of a person who has been the repeated subject of public comment from that prosecutor during his election campaign. This is an issue which has profound ramifications for the due process clause's guarantee of fair criminal proceedings across a nation which elects most local prosecutors. At issue is whether the trial court violated due process when it refused to disqualify the elected state's attorney and appoint a special prosecutor.

In part, due to separation of powers (*U.S. v. Armstrong*, 517 U.S. 456, 464 (1996)), and the limitations of judicial review (*Wayte v. U.S.*, 470 U.S. 598, 607 (1985)), a prosecutor has broad discretion. He or she can decide what charges to bring, the timing of bringing them, and the initial venue. (*U.S. v. LaBonte*, 520 U.S. 751 (1997); *U.S. v. Lovasco*, 471 U.S. 783, 795-796 (1977) (delay does not violate due process); *U.S. v. Parson*, 955 F.2d 858, 873 (3rd Cir. 1992) (agreement between federal and state prosecutors to divide charges proper).) The prosecutor also has far reaching authority to investigate, grant immunity, negotiate

plea agreements and dismiss charges. (*See, e.g. Weatherford v. Dursey*, 429 U.S. 545 (1977); *Renaldi v. U.S.*, 434 U.S. 22 (1977).) Such broad discretion is limited by principles of due process prohibiting, for instance, vindictive prosecution. (*See, Blackledge v. Perry*, 417 U.S. 21, 28-29 (1974).)

In recent years attention has been given to legal questions surrounding the election of state judges, both as to the candidate's rights to vigorously campaign for that office (*Republican Party of Minnesota v. White*, 536 U.S. 122 (2002)), and to the consequences of campaign activities (*Caperton v. A.T. Massey Coal Co.*, 556 U.S. ___ (2009).) Although the due process requirements for the appearance of impartiality may be different between the office of judge and that of prosecutor (*Marshall v. Jerrico, Inc.*, 446 U.S. 238 (1980)), the requirement of an impartial prosecutor solely serving the public interest is as much a necessity. (*Burger v. U.S.*, 295 U.S. 78 (1935); *Young v. U.S.*, 481 U.S. 787 (1987).) Also, as with *Caperton*, a prosecutor's campaign can have consequences to the real or apparent impartiality of the elected prosecutor. (*Cf. State v. Snyder*, 256 La. 601, 237 So.2d 392 (1970) (prosecutor's involvement in mayoral campaign against defendant disqualified him from prosecuting defendant).) In the case at bar, a defense motion led to the suppression of written journals which had been improperly seized by sheriff's police. In his campaign, Henry Dixon repeatedly commented on the court's suppression of the journals, claiming they were "critical" evidence of "criminal sexual

behavior" and that the Bickerstaff case was therefore being mishandled. Worse, having done so within the context of an election campaign, he made the conviction of Bickerstaff a personal campaign pledge. He did this by creating a public issue of whether Bickerstaff was going to get away with "criminal sexual behavior" under his opponent unless he himself were elected. If elected, he would himself successfully prosecute this individual's "tough" case. He did this at a time when he was only a candidate without access to the pretrial facts and evidence of the case.

This was not the only mayhem inflicted by Dixon upon the due process rights of Bickerstaff. When Bickerstaff filed a motion for change of venue, Dixon twice held press conferences to comment on this motion, treating the defense as a collusive agent of his opponent and the motion as a political move of the Whitcombe campaign. These charges by Dixon injected his political bias into the core of the case.

Dixon's campaign strategy of using the Bickerstaff case was successful in that he was in fact elected Lee County State's Attorney. Upon becoming State's Attorney he immediately increased the charges against Bickerstaff from four serious counts to twelve, including twelve lesser counts. Under Illinois law convictions of the serious counts trigger consecutive sentences which in turn had the effect upon the conviction of Bickerstaff of increasing his sentence to a total of 80 years imprisonment.

At the time of the hearing on the motion to disqualify Dixon, the defense objected that Dixon was in fact still broadcasting his campaign website containing all of the allegations he had been making against Bickerstaff. Dixon offered no excuse or explanation for this prosecutorial misconduct. (*See*, *Henslee v. U.S.*, 246 F.2d 190 (5th Cir. 1957); *U.S. v. Coast of Maine Lobster Co.*, 538 F.2d 899 (1st Cir. 1976).) He only removed the website upon the request of the trial judge.

Included in the Appendix are the trial judge's only comments on the Motion to Disqualify, both of which were oral, (App. 17-22, 24) and at no time did he directly address the due process argument that had been made to him except to dismiss that part of the argument based upon *Caperton* as not being analogous. (App. 24).

In the Appellate Court the defense argued, just as it had in the trial court, that under the due process clause, extrajudicial publicity by the prosecutor before and after his election should warrant disqualification of that prosecutor.

It was also argued that Dixon's failure to stop broadcasting his inappropriate comments on the Bickerstaff case once elected was a violation of Illinois Supreme Court Rules of Professional Conduct 3.6(a), 3.6(b), and 3.8(e). These Rules are taken directly from the American Bar Association Rules of Professional Conduct. If these ethical rules do not reach the candidate they should nonetheless be held

as fair standards of due process. Ethical rules cannot be divorced from due process consideration. (*Cf. Attorney Grievance Commission of Maryland v. Gansler,* 377 Md. 656, 835 A.2d 548 (2003); *Gentile v. State Bar of Nevada,* 501 U.S. 1030, 111 S.Ct. 2720, 115 L.Ed.2d 888 (1991); *see*, Selesnick, *Innocent Until Proven Guilty: Will Patrick Fitzgerald's Public Statements Prejudice Rod Blagojevich's Trial?*, 23 Georgetown J. Law Ethics 827.)

The defense however was unable to convince the lower court that the issue was one of political bias, interest and partiality of the prosecutor and not one of proof of prejudice of the jury, as had been argued by the State of Illinois. The Appellate Court was therefore critical of the defense for failing to include *voir dire* in the record. However, the case at bar did not come to the Illinois Appellate Court on a motion for change of venue but instead on a motion for disqualification of the State's Attorney. And although the issue was squarely put to the Illinois Supreme Court, it denied leave to appeal.

Bias stemming from the campaign of an elected prosecutor should be analyzed in the same manner as this Court analyzed potential bias of an elected state judge. (Compare, *North Carolina v. Pearce*, 395 U.S. 711 (1969) with *Blackledge v. Perry*, 417 U.S. 21 (1974).) In *Caperton v. A.T. Massey Coal Co.*, 556 U.S. ___ (2009), this Court dealt with the constitutional issue of whether prior campaign activity could create a conflict of interest for an elected judge. This Court held its inquiry into a real or apparent conflict resulting

from a substantial campaign donation from a litigant cannot be controlled by the judge's own finding as to recusal nor by any requirement of a showing of prejudice, stating:

> "In lieu of exclusive reliance on its personal inquiry, or on appellate review of the judge's determination respecting actual bias, the due process clause has been implemented by objective standards that do not require proof of actual bias. (Citations omitted.) In defining these standards the Court has asked whether, 'under a realistic appraisal of psychological tendencies and human weaknesses,' the interest 'poses such a risk of actual bias or prejudice that the practice must be forbidden if the guarantee of due process is to be adequately implemented.' (Citation omitted.)." (556 U.S. at ___.)

In *Caperton*, the campaign donation by the litigant was lawful in itself but created a probability of bias. In the case at bar, the campaign conduct by Henry S. Dixon, whether lawful or ethical, created a probability of bias in Dixon's execution of his office. In this instance, Dixon was not "indebted" to a campaign donor but he was certainly indebted and bound to his own campaign attacks repeatedly and publicly complaining that a former Boy Scout leader had "sex journals" which proved "criminal sexual behavior." Under "a realistic appraisal of psychological tendencies and human weaknesses" it is clear that Dixon as the newly elected State's Attorney was compelled to vindicate his political statements about Bickerstaff to

obtain a conviction against this human being at any cost and with sufficient severity to justify the prosecutor's own campaign statements. This "bias" though he created it himself through his campaign against this defendant is in practical respects indistinguishable from a due process violation when the prosecutor is motivated by a "genuine animus" (*U.S. v. Sanders*, 211 F.2d 711, 721 (2nd Cir. 2000) or where a defendant is charged in retaliation of the exercise of constitutionally protected rights (*Blackledge v. Perry*, 417 U.S. 21 (1974); *U.S. v. Cyprian*, 23 F.3d 1189 (7th Cir. 1994).) What Dixon had done by increasing the charges immediately on assuming office was to punish Bickerstaff for what the law plainly allowed him to do by having the journals suppressed. This was a due process violation of the most basic sort. (*North Carolina v. Pearce*, 395 U.S. 711, 738 (1969) (opinion of Black, J.).) "For an agent of the State to pursue a course of action whose objective is to penalize a person's reliance on his legal rights is patently unconstitutional." (*Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978) (citation and internal quotation marks omitted).)

The defense urges that there is a profound unfairness to the prosecution of this case felt by the Defendant who was facing charges which were serious enough that they led to an effective "life without parole" sentence. It was unfair that while his case was pending and had not yet been tried, he heard a constant barrage of public statements that his case was being mishandled by a prosecutor who was not

tough enough on him because he had exercised his rights. It is not the unfairness but the violation of due process that has been left unredressed by the lower courts.

CONCLUSION

For the foregoing reasons the petition for the writ of certiorari should be granted.

Respectfully submitted,

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NOTICE

The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 2-09-0586

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

PUBL. IN FULL

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CHARLES L. BICKERSTAFF, Defendant-Appellant.	Appeal from the Circuit Court of Lee County. No. 07-CF-156 Honorable Stephen C. Pemberton, Judge, Presiding. (Filed Jul. 29, 2010)

JUSTICE O'MALLEY delivered the opinion of the court:

Defendant, Charles Bickerstaff, appeals from his conviction of 11 counts of criminal sexual assault. On appeal, he argues that his conviction must be reversed because (1) the current Lee County State's Attorney's extrajudicial statements about the case deprived him of a fair trial, and (2) the trial court erred in denying his motion to appoint a special

prosecutor in place of the State's Attorney's office. For the reasons that follow, we affirm the judgment of the trial court.

Before his trial, defendant filed a motion for change of venue in October 2008 and a motion to disqualify the Lee County State's Attorney's office in February 2009. Both motions were premised on what defendant alleged were improper extrajudicial statements about his case by Henry Dixon, who was a candidate for Lee County State's Attorney when the statements were made and was elected before defendant's trial began. Defendant produced documentary evidence of Dixon's statements, whose authenticity the State did not contest. All of the comments at issue pertained to inculpatory evidence that had been found in a search of defendant's home but suppressed from evidence at defendant's trial. Defendant submitted a printout of a Web page, created by Dixon, to criticize his incumbent opponent, Paul Whitcombe. The printout contained the following commentary on the current case:

> "In the pending case, *People v Bickerstaff*, 2007 CF 179, the trial judge ruled that certain critical evidence was not admissible because the search warrant failed to include [evidence of the same type].
>
> The person who drafted the Complaint for Search Warrant and the Search Warrant just failed to include a broader list of items once [*sic*] would expect to find, He asked for DVDs, computer images, and magazines, He just as easily

> could have – and should have – included notebooks, handwritten journals, diaries, or written documents, but he failed to do so. A slipshod job of it.
>
> See the accompanying Telegraph article, [The word 'article' appeared as a hyperlink, apparently to a newspaper article describing the trial court's ruling excluding the evidence.] The way Paul Whitcombe heaps praise on the sheriff's deputies, you would think Paul Whitcombe wants to divert scrutiny away from the important question,
>
> Who do you suppose it was who failed to do a thorough job of drafting the Complaint and more importantly, the Search Warrant? No doubt it was out [*sic*] own State's Attorney."

The printout also included statistics detailing the percentage of Whitcombe's felony cases in which counts had been dismissed or reduced to misdemeanors or in which Whitcombe had obtained guilty pleas. Comments by the parties and the court on the record indicate that the Web page remained active even after Dixon's election and after defendant's motion to disqualify Dixon's office; those same comments indicate that Dixon discontinued the Web page once defendant pointed out that it remained posted.

Defendant also submitted a printout of a newspaper article that reported on the Web page's contents and provided context for the comments by stating that "[d]efense attorneys recently won a major victory when a judge ordered a series of potentially

damning journals tossed from the State's evidence because the search of Bickerstaff's home went beyond the scope of a search warrant Whitcombe drafted." The article did not, however, attribute that passage to Dixon.

Defendant also submitted a transcript of public comments Dixon made at a campaign appearance:

> "I will thoughtfully draft correct and correctly draft court documents, such as search warrants, complaints for search warrants which will give the officers the latitude they need and they are entitled to have. Mr. Whitcombe doesn't. And I give you an example of People v. Bickerstaff 07 CF 179 in which the Telegraph reported that it was a botched search. Sheriff Varga you never should never [*sic*] have stood up and said nothing. Because it was not a botched search. Your cops did the right thing. It was a botched search warrant and Mr. Whitcombe drafted that warrant. These are acts of conduct that I just cannot tolerate."

Another newspaper article that defendant submitted reported defendant's request that his case be moved from Lee County. It quoted Dixon as saying that he "'never said anything about Bickerstaff's guilt or innocence'" but only that "'[w]hen the state's attorney drew the search warrant, he didn't do it properly.'" The article included Whitcombe's reply that, in the reporter's words, Dixon's "election plank could make it impossible for Dixon to pick up prosecution of Bickerstaff if he wins." Dixon's quoted

response to this argument was that he "'just assumed [the litigants] would have this case resolved. If they can't get it resolved in one and a half months, I'd have to consider what [Whitcombe] said.'"

A later newspaper article contained in the record, titled "Dixon blasts venue motion," stated that Dixon was accusing defendant's counsel of filing his motion to move the case from Lee County in order to politicize the case to help Whitcombe's reelection bid. In the article, Dixon was quoted as saying "'I simply and directly asserted that it was incorrect to refer to the search in the Bickerstaff case as a "botched search." It was a botched search warrant.'" The article also attributed to Dixon the sentiment that "there's a difference between calling on Whitcombe to take responsibility for a warrant and calling the case botched." Defendant also noted to the trial court that he had originally been charged with 8 counts of sexual assault and abuse; after Dixon was elected, the State amended its charges to include a total of 24 counts of sexual assault and abuse.

In his motion for a change of venue, defendant argued that Dixon's statements commented on suppressed evidence, implied defendant's guilt, used defendant's name as "an object of scorn," and thus prejudiced the jury pool. In his later motion to disqualify Dixon's State's Attorney's office, defendant argued that Dixon had violated rules of professional conduct and created an appearance of impropriety by participating in defendant's case after using it as a political device to win election.

In December 2008, the trial court commented in open court that defendant had withdrawn his motion for a change of venue, and defendant did not disagree. The record contains no indication as to why defendant withdrew his motion. In February 2009, the trial court denied defendant's motion to disqualify Dixon's office; the court concluded that none of Dixon's comments demonstrated that Dixon had an inappropriate interest in defendant's case. The trial court further found that there was no evidence that the public perceived any conflict of interest on Dixon's part, but the court added that, if "that becomes an issue in voir dire, [it] could revisit" its assessment of public awareness. In later pretrial proceedings, the parties and the trial court agreed to convene a larger-than-normal jury venire to avoid problems with pretrial publicity. Defendant also filed a written motion requesting that, due to pretrial publicity and the sensitive nature of the charges at issue, potential jurors be examined individually "in order to prevent the venire persons from hearing the questions being asked" of others. The record shows that the trial court granted defendant's request in part, by allowing separate examination of four potential jurors at a time. However, the record contains no transcript or other description of the *voir dire* proceedings.

At the conclusion of defendant's trial, the jury found him guilty of 22 charges of sexual assault and abuse, and the trial court sentenced him to a total of 80 years' imprisonment for the 11 sexual assault charges. Defendant timely appeals.

Defendant's first argument on appeal is that Dixon's extrajudicial statements prejudiced his ability to obtain a fair trial on the charges against him. See *People v. Kirchner*, 194 Ill. 2d 502, 528-29 (2000) ("Under both the United States and the Illinois Constitutions, a criminal defendant is entitled to a jury that is impartial, which means '"a jury capable and willing to decide the case solely on the evidence before it."'"), quoting *People v. Olinger*, 176 Ill. 2d 326, 353 (1997), quoting *Smith v. Phillips*, 455 U.S. 209, 217, 71 L. Ed. 2d 78, 86, 102 S. Ct. 940, 946 (1982). However, as the State notes in its brief, "a defendant represented by counsel of his choice cannot, after his conviction, complain of the effect that pretrial publicity may have had on the jury when he failed to move for a change of venue or continuance or to preserve the *voir dire* examination." *People v. Hagel*, 32 Ill. 2d 413, 415 (1965). This rule stands to reason. A reviewing court asked to evaluate the impartiality of a jury can do so only by examining the indications contained in the record, and those indications will almost certainly come from evidence adduced in response to a motion for a change of venue or during *voir dire*, See, *e.g., Kirchner*, 194 III. 2d at 528-35 (evaluating the defendant's impartiality claim by reviewing *voir dire* questions and answers, and discussing cases in which reviewing courts examined evidence adduced at *voir dire* or in response to a motion for a change of venue). Defendant here did not pursue his motion for a change of venue, and the record on appeal does not include any substantial description of the *voir dire* proceedings. Further, even

though the State argues forcefully in its brief that these problems dictate that defendant's lack-of-impartiality argument be rejected, defendant does not reply to the State's position. Thus, we are unable to evaluate the effect of pretrial publicity, or *voir dire* questioning, on defendant's jury, and we agree with the State that we must reject defendant's argument.

Defendant's second argument is that the trial court erred in denying his motion to disqualify Dixon's office from this case and instead appoint a special prosecutor. Section 3-9008 of the Counties Code allows a court to appoint an attorney to act on behalf of the State's Attorney "[w]henever the State's attorney is sick or absent, or unable to attend, or is interested in any cause or proceeding * * * which it is or may be his duty to prosecute or defend." 55 ILCS 5/3-9008 (West 2008). This provision has been interpreted as providing the standard for determining when a State's Attorney should be removed from a case due to improper interest in a case. See *People v. Lang*, 346 Ill. App. 3d 677, 680-81 (2004). The decision whether to appoint a special prosecutor under section 3-9008 rests within the discretion of the trial court. *Lang*, 346 Ill. App. 3d at 681.

The parties agree that, under our case law, a prosecutor will be deemed "interested" under section 3-9008 in three situations: (1) where the attorney is interested as a private individual in the litigation, (2) where the attorney is an actual party to the litigation, and (3) where the attorney's continued participation would create the appearance of impropriety in the

prosecution of a defendant. *Lang*, 346 Ill. App. 3d at 681-82. Defendant argues that the third problem – the appearance of impropriety – is present here. In order to determine whether a State's Attorney's office should be removed in order to alleviate the appearance of impropriety, a court must weigh the concern about the appropriateness of the office's prosecuting the case against "countervailing considerations" that include "(1) the burden that would be placed on the prosecutor's office if the entire prosecutor's office had to be disqualified; (2) how remote the connection is between the State's Attorney's office and the alleged conflict of interest; and (3) to what extent the public is aware of the alleged conflict of interest." *Lang*, 346 Ill. App. 3d at 683.

Defendant bases his argument regarding Dixon's disqualification on the assertion that Dixon violated Rules 3.6 and 3.8 of the Illinois Rules of Professional Conduct. Rule 3.6 prohibits "[a] lawyer who is participating or has participated" in a case from making a public "extrajudicial statement * * * if the lawyer knows or reasonably should know that it would pose a serious and imminent threat to the fairness of an adjudicative proceeding." 188 Ill. 2d R. 3.6. Among the types of comments the rule identifies specifically as threatening the fairness of a trial are comments in a criminal case relaying "the existence or contents of any confession, admission, or statement given by a defendant." 188 Ill. 2d R. 3.6(b)(2). Rule 3.8(a), as relevant here, states that "[t]he duty of a public prosecutor * * * is to seek justice, not merely to

convict," and that a prosecutor "shall refrain from making extrajudicial comments that would pose a serious and imminent threat of heightening public condemnation of the accused." 188 Ill. 2d R. 3.8(a).

In response to defendant's citation to the Rules of Professional Conduct, the State notes, correctly, that the central question for us is not whether Dixon violated an ethical rule; such disciplinary matters are not within this court's purview. Instead, the central question for us is whether the trial court abused its discretion in determining that Dixon's conduct did not meet *Lang*'s standard for compelling appointment of a special prosecutor. Dixon's alleged violations of ethical rules are informative on, but not determinative of that question.

The crux of defendant's ethical-rules argument is that, when Dixon used defendant's case as a means to criticize the incumbent State's Attorney, Dixon necessarily provoked public condemnation of defendant as well. Defendant further complains that Dixon publicized, via his Web site and newspaper interviews, the existence of evidence that had been excluded from defendant's trial. According to defendant, Dixon by these actions created an appearance of impropriety, both because he unfairly publicized defendant's case and because his actions left the impression that he had an inappropriately strong interest in the case.

The trial court here, however, considered these arguments and still came to the conclusion that the appearance of impropriety was not sufficient to

trigger the appointment of a special prosecutor. In so ruling, the trial court made the following observations, which we find particularly apt:

> "The content of the comments was basically that a ruling by this court evidenced the fact that the then State's Attorney had not done his job * * *. At no time did Mr. Dixon specifically speak towards the guilt or innocence of this defendant. The comments had to do with his view on whether the State's Attorney had done his job. In fact, in one of the articles Mr. Dixon specifically says he's not commenting on the guilt or innocence of this defendant.
>
> I cannot find that the defendant has pointed to anything of substance in any of the State's Attorney's comments * * * that would suggest that he has what I would consider to be an interest in this case. Saying the search warrant was botched may be an indictment of the prior State's Attorney, but it is not of this defendant."

The trial court also addressed the fact that Dixon's Web site, which contained criticisms of his predecessor's handling of defendant's case, was not deactivated after Dixon's election. The court deemed the Web site's continuation "inappropriate," but it credited the prosecution's representation that Dixon had deactivated the Web site immediately after the hearing at which the defense pointed it out. The court then concluded that the Web site's continuation after Dixon's election, combined with Dixon's pre-election statements about defendant's case, were insufficient to establish an appearance of impropriety. We agree

with the trial court's analysis, and we therefore cannot hold that the trial court abused its discretion in denying defendant's motion.

For the contrary position that Dixon was unduly interested in this prosecution, to an extent that his interest tainted defendant's trial with an appearance of impropriety, defendant relies heavily on this court's decision in *Lang*. In *Lang*, after a hearing in proceedings related to the defendant's allegedly driving with a revoked license, the prosecutor involved in the case surreptitiously followed the defendant out of court, saw him drive away from the courthouse, and contacted police to inform them that the defendant was driving without a license. *Lang*, 346 Ill. App. 3d at 678-79. The prosecutor apparently continued to prosecute the case himself – he even argued against the defendant's motion to appoint a special prosecutor – and became the sole witness at trial (which was prosecuted by another attorney from the same office). *Lang*, 346 Ill. App. 3d at 679. On appeal, this court held that the trial court had abused its discretion by declining to appoint a special prosecutor. See *Lang*, 346 Ill. App. 3d at 684. This court explained that, "[a]lthough the [prosecutor's] pursuit of the defendant was not wrong in itself, his aggressive behavior toward the defendant created the appearance that the State's Attorney's office was obsessed with finding evidence against the defendant to obtain a conviction against him at all costs." *Lang*, 346 Ill. App. 3d at 684. In so holding, the court emphasized that a prosecutor's becoming a witness would not *per se*

require appointment of a special prosecutor, but that "the specific facts of" *Lang* (*Lang*, 346 Ill. App. 3d at 685), which "significantly" included the prosecutor's affirmatively and surreptitiously working to catch the defendant in a crime and then becoming the key witness in the prosecution (*Lang*, 346 Ill. App. 3d at 686), warranted disqualification.

The conduct at issue in this case does not approach that discussed in *Lang*. As the trial court noted, Dixon's conduct was directed entirely at criticizing his predecessor, and there is no evidence, or argument, that Dixon personally instigated the case or entangled himself in it to an extent that exceeded his role as a prosecutor. Accordingly, *Lang* does nothing to alter our conclusion that the trial court did not abuse its discretion when it determined that defendant did not demonstrate that Dixon's conduct created an appearance of impropriety sufficient to compel appointment of a special prosecutor.

For the foregoing reasons, we affirm the judgment of the trial court.

Affirmed.

JORGENSEN and HUDSON, JJ., concur.

United States of America

2-09-0586

State of Illinois,
Appellate Court, } **ss.**
Second District,

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

CHARLES L. BICKERSTAFF,

Defendant-Appellant.

I, ROBERT J. MANGAN, Clerk of the Appellate Court, in and for said Second Judicial District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true, full and complete copy of the decision of the said Appellate Court in the above entitled cause of record in my said office.

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of the said Appellate Court, in Elgin, in said State, this 29th *day of* July, *A.D. 20*10.

/s/ Robert J. Mangan
Clerk Appellate Court, Second District

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
5TH JUDICIAL CIRCUIT
LEE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff, vs. CHARLES L. BICKERSTAFF, Defendant.	No. 07-CF-156 (Filed Jul. 20, 2009)

REPORT OF PROCEEDINGS held at the hearing before the Honorable Stephen C. Pemberton on the 25th day of February, 2009.

APPEARANCES:

PETER BUH, State's Attorney

CHARLES L. BICKERSTAFF, Defendant

ROLFE EHRMANN and DANA CONSIDINE, Defendant's Attorneys

Jill M. Gray, C.S.R.
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Oregon, IL 61061
License No. 084-002368

* * *

[11] about? I certainly can't mean that, because they even state it here, that although the Assistant State's Attorney's pursuit of the defendant was not

wrong in itself, it wasn't. So then what is the complaint? The complaint is that an Assistant State's Attorney was a witness at the same time that the fellow Assistant State's Attorney was representing the state. That's a violation of professional rules and that's what has created the appearance of impropriety.

THE COURT: Thank you both for your comments. The question of appointing a special prosecutor is, I think, governed by statute in Illinois, and it is 55 ILCS 5/3-9008.The statute says that whenever the State's Attorney is sick or absent or unable to attend, or is interested in any case or proceedings, civil or criminal, which it is, or may be his duty to prosecute or defend, the court in which said cause or proceedings is pending may appoint some competent attorney or prosecutor to defend the cause. So the question is what is the meaning of the term, or is interested in, quote, is interested in?

I looked at some cases on this. I think one [12] of the better definitions is that a prosecutor has an 'interest in a case when the circumstances of the case evidence a reasonable possibility that the prosecutor's office may not exercise its discretionary function in an even-handed way. In other words, that because of some involvement in the case, one way or another, that the prosecutor's office will not treat the defendant as it would treat a similarly situated defendant absent this particular issue.

The defendant claims that the evidence shows that the State's Attorney in this case has such an

interest, and primarily points to comments that the current State's Attorney made first before he was elected, and secondly, that were on his web site before he was elected, and remained on his web site following the election, and were, by all accounts, on his web site as of the last hearing.

I've indicated to the lawyers, on Monday, and I'll indicate today, that I think that that – those comments on the web site were inappropriate because of the fact that Mr. Dixon is now the State's Attorney, that is, that they were inappropriate to remain on the web site after his [13] swearing in. Mr. Buh told me, on Monday, that immediately following the last hearing they, in fact, were removed from the web site, and I have every – no reason to doubt that, and every reason to believe that.

Does that, or do those comments of themselves, show that Mr. Dixon has an interest in this case which would require me to exercise my discretion and replace him with a special prosecutor? As I said, the only evidence of any kind that Mr. Dixon has done anything since he was sworn in is the web site. The various exhibits attached to the motion are – include the web site and also numerous newspaper articles which were printed prior to the election, before Mr. Dixon was a party to this case.

To me the issue is – the question of an interest dovetails to some extent with the issue of the Code of Professional Responsibility, but not – it is not solely based on the Code of Professional Responsibility. The

Code of Professional Responsibility sections that have been cited talk about an attorney, or a prosecutor who is handling a case, does certain things. Mr. Dixon was not [14] handling the case when he made these various comments.

And then we have to look at the content of the comments. The content of the comments was basically that a ruling by this court evidenced the fact that the then State's Attorney had not done his job, basically, I'll say. At no time did Mr. Dixon specifically speak towards the guilt or innocence of this defendant. The comments had to do with his view on whether the State's Attorney had done his job. In fact, in one of the articles Mr. Dixon specifically says he's not commenting on the guilt or innocence of this defendant.

I cannot find that the defendant has pointed to anything of substance in any of the State's Attorney's comments either in the newspaper, or on the radio, on the web site, that would suggest that he has what I would consider to be an interest in this case. Saying that the search warrant was botched may be an indictment of the prior State's Attorney, but it is not of this defendant. Comments on what might or might not have been in the suppressed evidence do not arise to comments about the defendant's guilt or innocence, in my view.

[15] The *Lane* case, which is cited here by the defendant, is a case in which a State's Attorney – an Assistant State's Attorney who is prosecuting a defendant, in court, took it upon himself to follow the

defendant out to the parking lot, saw him drive off, and knew he had a suspended license, and then became a witness in the case. There was a motion to disqualify him, and the whole office. He acknowledged he couldn't prosecute the case, although apparently he continued to show up in court on more than 20 occasions as the prosecutor, until the case went to trial, which I find kind of curious. I don't know the explanation for that, but be that as it may, the court seems to say this case, that is the *Lane* case, should be limited, and limited to the facts in that case – that it found in that case, that allow the State's Attorney's actions were not wrong – assistant's actions, his aggressive behavior toward the defendant, and I'm quoting, created the appearance that the State's Attorney's Office was obsessed with finding evidence against the defendant to obtain a conviction against him at all costs. Such an appearance was improper. And then there's a further language that says, we [16] believe that it is a rare case in which the Assistant State's Attorney will serendipitously follow a defendant and then become the key witness in trial. In those rare cases, we believe the importance of maintaining the public's esteem for the State's Attorney's Office and the integrity of criminal justice outweighs the resulting inconvenience to the State's Attorney to appoint a special prosecutor.

While the court here broadened the bases for appointing a special prosecutor from previous situations, and added an additional provision that if failure to appoint would possibly undermine the

integrity of the court as a basis to appoint a special prosecutor, and talked quite extensively about the appearance of impropriety and where there was an appearance of impropriety the court had the authority – the discretion to appoint a special prosecutor, it still is a fact-determined kind of question, that is, do the facts in this case support a finding of appearance of impropriety to appoint a special prosecutor – that a special prosecutor should be appointed. The court said there are countervailing considerations, even if there is some [17] appearance of impropriety, which I'm not necessarily finding here. But the countervailing considerations are the burden on the prosecutor's office, if the entire office were disqualified, how remote the connection is between the office and alleged conflict and to what extent the public is aware of the alleged conflict.

I don't know that the burden is that significant or the connection is remote, but I don't think that, as I've said earlier, that there is an impropriety. I don't find there's any evidence that the public is aware of any alleged conflict of interest. I suppose if we select – begin to select a jury and that becomes an issue in voir dire, I could revisit it, but I don't think there's any evidence to support it at this point.

I had cited to the parties a case from West Virginia, which I'll cite again: *The State of West Virginia vs. Pennington*, which is found at 365 Southeast 2d 803, 179 West Virginia 139. In this case an Assistant State's Attorney was prosecuting the charge – a murder charge, and three days after the charge was

filed the State's Attorney died and the assistant became a candidate for office, and [18] while prosecuting the murder case, was involved in an election campaign. He was in the State's Attorney's office at all times, so he was an interested party in the case in the sense that he was prosecuting the case. Whether his interests were sufficient to disqualify him was, of course, the issue for the court. And the court then cited the Code of Professional Responsibility in West Virginia, which is very similar to our Code of Professional Responsibility, and said that under circumstances where it can reasonably infer that the prosecuting attorney has an interest in the outcome of a criminal prosecution, beyond ordinary dedication to his duty to see that justice is done, the prosecuting attorney should be disqualified. It talked about the media giving extensive coverage to the case during the campaign, and that there were broadcasts that the prosecutor in question realized that the manner in which he handled the case would likely have a bearing on his future as a prosecutor. That there were comments made during the campaign about the case and whether certain people should be given immunity. His opponent put out an add [sic] with that question in it. The prosecutor responded by [19] way of his own political ads, explaining why he gave immunity to a witness. The court found that these were inappropriate activities, ill-advised they called them, but they did not find that meant that the prosecutor had an interest in the case, in the sense that he should be disqualified. In fact, they said we strongly condemn

the conduct of both parties here, but we don't think it rises to the point of disqualifying the prosecutor.

I think that circumstances in our case, while I think they were ill-advised, I don't strongly condemn them because the only thing I find that was of question was the maintaining of this web site beyond the date of the swearing in of the current State's Attorney. That's been remedied. I don't think it in any way rises to the point of making Mr. Dixon or his office have an interest in the outcome that they would – so that they would prosecute this case any differently than they would prosecute a case against a defendant named John Doe, who had similar charges, and therefore my belief is that the motion is not well-founded, and I'm denying the motion.

Now the next question before us, there are a

* * *

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
STATE OF ILLINOIS
LEE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	No. 07-CF-156
vs.	)	(Filed Jul. 20, 2009)
CHARLES BICKERSTAFF,	)	
Defendant.	)	

REPORT OF PROCEEDINGS of the Pre-trial Hearing held in the above-entitled cause before the HONORABLE STEPHEN C. PEMBERTON, Circuit Judge of said Court on the 11th day of March, 2009, at Dixon, Lee County, Illinois.

APPEARANCES:

DEFENDANT BICKERSTAFF, in his own proper person, and with counsel, ROLFE EHRMANN and DANA CONSIDINE, Attorneys at Law.

PEOPLE OF THE STATE OF ILLINOIS represented by Assistant State's Attorney PETER BUH.

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* * *

[5] specifically named my client and he made the, this case a, an aspect of his campaign rhetoric, and has compromised himself in handling this case, and, so that's, in any event, the basis of my argument.

THE COURT: Thank you. Mr. Buh, you wish to respond?

MR. BUH: Your Honor, you've heard all the State's arguments and you ruled previously, and we stand on those arguments.

THE COURT: I've looked at the motion to reconsider, and done some scanning of the brief filed.

Previously I've determined that the criticism Mr. Dixon was leveling during the campaign were directed towards the prior State's Attorney, not towards the Defendant. I have not found any time where Mr. Dixon made any statement or gave any opinion about the guilt or innocence of the Defendant.

I don't find that the case cited now by the Defendant, which is before the U.S. Supreme Court for decision, is analogous. I do find that my previous decisions in this matter were proper [6] and correct in the sense that the, the State's Attorney, now State's Attorney, then candidate, I don't think has done anything improper or, or inappropriate, which would require his disqualification. I don't believe he's a quote, an interested, interested in the outcome, as the statute states is the prerequisite, so I'm going to deny the Motion to Reconsider.

MR. EHRMANN: One other aspect about this, there's an argument to be made, has not been made by the State, I'm unsure of the court's position, as to proof of prejudice. Proof of prejudice in this instance would be buried in one of the pleadings I presented to the court in the memorandum, I believe I made an assertion that there's been no know negotiation between the State and the defense since the election of Mr. Dixon; that is, no offer has been made. And I think the record should at least reflect that that is, if anyone were to determine that prejudice needs to be shown, that I believe that is proof of prejudice.

MR. BUH: Judge, just to clarify –

THE COURT: Yes.

* * *

Supreme Court of Illinois
Clerk of the Court
Supreme Court Building
Springfield, Illinois 62701
(217) 782-2035

110986

November 24, 2010

Mr. Rolfe Ehrmann
Ehrmann Gehlbach Badger & Lee, LLC
215 East First Street, Suite 100
P.O. Box 447
Dixon, IL 61021

No. 110986 – People State of Illinois, respondent, v. Charles L. Bickerstaff, petitioner. Leave to appeal, Appellate Court, Second District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on December 29, 2010.

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
LEE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	
vs.	)	
CHARLES L. BICKERSTAFF,	)	
Defendant.	)	No. 07 CF 156

MOTION FOR RECONSIDERATION OF THE DISQUALIFICATION OF THE STATE'S ATTORNEY

(Filed Mar. 6, 2009)

Now comes Defendant, Charles L. Bickerstaff, by and through his attorney, Rolfe Ehrmann of Ehrmann Gehlbach Badger & Lee, and moves for a reconsideration of the previously filed Motion to Disqualify the State's Attorney by supplementing the memorandums filed thereunder with the foregoing additional material.

THE UNITED STATES SUPREME COURT IS CURRENTLY CONSIDERING ISSUES RELATING TO THE DISQUALIFICATION OF A JUDGE RAISING SIMILAR CONSTITUTIONAL ISSUES TO THAT OF THE CASE AT BAR

Due process requires impartial trials. There are illegal and unconstitutional conditions which cast

doubt on the integrity of the judicial process and consequently such conditions violate due process and other constitutional requirements. These include both real and possible bias on the part of the trial judge (*Turney v. Ohio* (1927), 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749; *In re Murchison* (1955), 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed. 942; *Mayberry v. Pennsylvania* (1971), 400 U.S. 455, 91 S.Ct. 499, 27 L.Ed.2d 532) or real or possible bias through the selection of a jury (*Peters v. Kiff* (1972), 407 U.S. 493, 92 S.Ct. 2163, 33 L.Ed.2d 83).

In the case at bar it has been argued that the real or possible bias of the State's Attorney and his office constitutes a deprivation of due process and rights to a fair trial. Cases in support thereof have been cited and will not be repeated. The office of the state's attorney, just as the office of a judge, is a part of the government, one a part of the executive branch and the other a part of the judicial branch, and as such, bias by either office and whether real or apparent, adversely affects the structural framework within which the trial proceeds.

For this Honorable Court to permit the prosecutor to continue in the case at bar not only introduces trial error but in fact introduces a structural error requiring automatic reversal. (*Arizona v. Fulminante* (1991), 499 U.S.279, 111 S.Ct. 1246, 113 L.Ed.2d 302; *Rose v. Clark* (1986), 478 U.S. 570, 106 S.Ct. 3101, 92 L.Ed.2d 460.) The United States Supreme Court is currently considering a case argued just days ago which the defense contends is directly applicable to

the case at bar. In *Caperton v. Massey Coal Company* (No. 08-22, 2009), ___ U.S. ___, the issue is whether lawful campaign donations to a political candidate for a seat on the West Virginia Supreme Court can disqualify that candidate from later adjudicating as judge a case involving the donor. A copy of the brief filed by Theodore Olson on behalf of the Petitioners on writ of *certiorari* is attached hereto as additional authority and argument. The arguments therein are submitted for the proposition that campaign conduct can establish sufficient probable bias to require the disqualification on constitutional grounds. In *Caperton,* the campaign donation was lawful but creates a probability of bias. In the case at bar, the campaign conduct of Henry S. Dixon may or may not have been lawful but created a probability of bias. In this instance he is not "indebted" to a donor but to his campaign statements. Now as State's Attorney he must vindicate his statements about the Defendant, particularly his public complaint suggesting that Defendant is avoiding prosecution for critical criminal behavior.

For the foregoing reasons it is requested that to avoid fundamental error the office of the Lee County State's Attorney must be disqualified and a special prosecutor appointed.

CHARLES L. BICKERSTAFF, Defendant

BY EHRMANN GEHLBACH BADGER & LEE

BY /s/ Rolfe Ehrmann
Rolfe Ehrmann

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
LEE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
vs.	)	
CHARLES L. BICKERSTAFF, Defendant.	)	No. 07 CF 156

MOTION TO DISQUALIFY STATE'S ATTORNEY

(Filed Feb. 11, 2009)

Now comes Defendant, Charles L. Bickerstaff, by and through his attorney, Rolfe Ehrmann of Ehrmann Gehlbach Badger & Lee, and moves this Court to disqualify the Lee County State's Attorney, Henry S. Dixon, pursuant to Illinois Supreme Court Rules 3.6 and 3.8, and in support thereof states as follows:

1. That on May 17, 2007, Charles L. Bickerstaff was named in an information charging him with eight counts of criminal sexual assault and aggravated criminal sexual assault in Case No. 07 CF 156.

2. That Bickerstaff has entered a plea of not guilty and he is awaiting trial in Lee County, where he is currently incarcerated, and has been so incarcerated for nearly two years.

3. That Bickerstaff is entitled to a fair and impartial trial by jury under well established Constitutional principles.

4. That Bickerstaff intends to exercise his right to a trial by jury.

5. That Bickerstaff has a Constitutional right to be presumed innocent.

6. That Illinois Supreme Court Rule 3.6(a) states in operative part: "A lawyer who is participating * * * in an investigation or litigation of a matter shall not make an extrajudicial statement that * * * would pose a serious and imminent threat to the fairness of an adjudicative proceeding."

7. That Illinois Supreme Court Rule 3.8(e) states in operative part: "The prosecutor in a criminal case shall refrain from making extrajudicial comments that would pose a serious and imminent threat of heightened public condemnation of the accused * * * ."

8. That at the time of the original filing of the charge in the above-captioned cause, Paul Whitcombe was the Lee County State's Attorney, but that during the pendency of the above-captioned cause there has been a campaign for the election of the Lee County State's Attorney for the term commencing December 2008, which campaign involved a contest between Henry S. Dixon and Paul Whitcombe.

9. That the aforesaid Henry S. Dixon is now the Lee County State's Attorney and is the prosecutor in the above-captioned criminal case.

10. That the aforesaid Henry S. Dixon has conducted a campaign in Lee County using the name of Charles L. Bickerstaff as a political device to obtain office and as an object of scorn and ridicule, as if Bickerstaff were in fact guilty.

11. That the comments of Henry S. Dixon in extrajudicial public statements, in newspapers and online pose to Bickerstaff a serious and imminent threat of heightened public condemnation.

12. That Henry S. Dixon has published during the pendency of the above-captioned cause and even to the present date continues to publish a website on the internet available to all members of the public which he denominated paulwhitcombe.com, which was the name of his predecessor and general election opponent.

13. That on the website aforesaid, Dixon had charged during the political campaign and continues to charge, assert and imply that Bickerstaff is guilty of the charges against him but that the prosecution of those charges by his general election opponent was mishandled and "botched," as shown in a printed copy of a page thereof dated February 9, 2009, attached as Exhibit A and incorporated herein.

14. That Henry S. Dixon had further stated and implied on the website aforesaid that the material

suppressed by this Honorable Court pursuant to the Constitution of the United States contained relevant probative evidence of the guilt of Bickerstaff, and Dixon therefore argues that the suppression of such materials was the result of an act of malfeasance on the part of the State or more particularly, his predecessor, Paul Whitcombe.

15. That for purposes of his campaign to become the Lee County State's Attorney, Henry S. Dixon has publicly restated his claims aforesaid on numerous occasions verbally to such groups, associations and gatherings available throughout Lee County during the campaign season.

16. That such gatherings have included a speech before the public organized by the Lee County Bar Association at the Dixon Theater on October 8, 2008, in which, before more than 200 attendees and broadcast on WIXN radio 1460 AM and 101.7 FM, Dixon again claimed that the prosecution of Bickerstaff was "botched" as shown in a transcribed excerpt of his recorded statement and newspaper article thereon attached hereto as Exhibit B and incorporated herein.

17. That in his numerous public statements aforesaid, Henry S. Dixon both expressed and implied that materials suppressed by this Honorable Court pursuant to the Constitution were relevant, probative and would have been otherwise admissible and would have established the guilt of Bickerstaff but for the "botched" search warrant written by his predecessor.

18. That in a newspaper article published on September 13, 2008 in the *Dixon Telegraph,* the largest circulation newspaper in the Lee County area, Dixon repeated his charges, apparently stating that "damning journals" were suppressed by this Honorable Court. Dixon went on to state, "It was not a botched search, it was a botched search warrant.", as shown by Exhibit C attached hereto and incorporated herein.

19. That on October 22, 2008 and again on October 28, 2008, Henry S. Dixon made public comments in the *Dixon Telegraph* on the motion for change of venue filed in the above-captioned cause, as shown in Exhibits D and E attached hereto and incorporated herein.

20. That in Exhibit D, an article reporting the defense motion for change of venue, Henry S. Dixon conceded that he would "have to consider" whether ethically he could "pick up prosecution of Bickerstaff if he wins" because of his extrajudicial statements about Bickerstaff.

21. That in Exhibit E under the headline "Dixon blasts venue motion" the *Dixon Telegraph* reported:

> "State's Attorney candidate Henry Dixon has accused attorney Rolfe Ehrmann of politicizing a high-profile case in an attempt to bolster fellow Republican and incumbent prosecutor Paul Whitcombe."

The *Telegraph* further reported, "To Dixon the case is synonymous with sloppy state's attorney work."

22. That the State's Attorney of Lee County, Henry S. Dixon, clearly intended to bring public condemnation of Paul Whitcombe, his general election opponent, by heightening public condemnation of Bickerstaff and his defense attorney.

23. That in all statements aforesaid, whether in public speech, in print or on-line, Henry S. Dixon has named the defendant specifically as Charles Bickerstaff and has further frequently stated the Lee County case number.

24. That by conducting a political campaign which has unhesitatingly used the name of Charles Bickerstaff as an object of scorn, ridicule and condemnation, Henry S. Dixon has caused through general publication and continues to cause on the internet to be disseminated to the citizens of Lee County allegations, suggestions, opinions and falsehoods which are highly prejudicial to Bickerstaff.

WHEREFORE, IT IS REQUESTED THAT this Honorable Court disqualify Henry S. Dixon as prosecutor of the above-captioned cause, and his office, and to appoint in place thereof a prosecutor not afflicted with prosecutorial misconduct.

CHARLES L. BICKERSTAFF,
Defendant

BY EHRMANN GEHLBACH
BADGER & LEE

By /s/ Rolfe Ehrmann
Rolfe Ehrmann

AFFIDAVIT OF SERVICE

The undersigned, on oath, states that on February 11, 2009, I served this Motion by personally delivering/mailing/faxing a copy thereof to the Lee County State's Attorney's Office, 309 S. Galena Ave., Dixon, IL 61021.

/s/ Rosemary Flowers

Subscribed and sworn to before me
this 11th day of February, 2009.

/s/ Laurie A. Henkel
Notary Public

Rolfe Ehrmann
Ehrmann Gehlbach Badger & Lee
Attorneys for Defendant
215 E. First St., Suite 100
P.O. Box 447
Dixon, IL 61021
(815) 288-4949
(815) 288-3068 FAX

EXHIBIT A

The Truth About Lee County State's Attorney Paul Whitcombe

Cases

From the day he took office in December 2004, through case number 07 CF 218, here is Paul Whitcombe's statistical record of the felony cases he filed. This is not to praise Whitcombe or to criticize him. It's simply the facts taken from the files of the Lee County Circuit Clerk.

		Percentage
Cases filed:	1,086	
Cases dismissed	296	27%
Total counts	2,463	
Total counts pled guilty	742	30.1%
Total counts dismissed	1,562	63.4%
Total felonies reduced to misdemeanors	159	6.4%

Summary:

Of the 1,086 felony cases filed by the State's Attorney, 296 were dismissed by the State's Attorney.

Of the 2,463 felony counts: There were 742 pleas of guilty, some 30.01%. There were 1,562 dismissed, some 63.4%.

There were 159 reduced to misdemeanors, some 6.4%.

People v. Bickerstaff

In the pending case, *People v. Bickerstaff*, 2007 CF 179, the trial judge ruled that certain critical evidence was not admissible because the search warrant failed to include the notebooks, handwritten journals, diaries, or written documents evidencing criminal sexual behavior.

The person who drafted the Complaint for Search Warrant and the Search Warrant just failed to include a broader List of items once [sic] would expect to find. He asked for DVDs, computer images, and magazines. He just as easily could have – and should have – included notebooks, handwritten journals, diaries, or written documents, but he failed to do so. A slipshod job of it.

See the accompanying Telegraph article. The way Paul Whitcombe heaps praise on the sheriff's deputies, you would think Paul Whitcombe wants to divert scrutiny away from the important question.

Who do you suppose it was who failed to do a thorough job of drafting the Complaint and more importantly, the Search Warrant? No doubt it was out [sic] own State's Attorney.

* * *

[*Newspaper Replica*]

Judge tosses out sex journals

Prosecution to continue despite ruling that seizure was unconstitutional

BY SAM SMITH
ssmith@svnmail.com
800-798-4085, ext. 525

DIXON – Some of the rape and molestation case against retired local Boy Scouts administrator Charles L. Bickerstaff, 57, could be tossed after a ruling Monday in Lee County court.

Judge Stephen Pemberton said prosecutors must shelve six of Bickerstaff's handwritten journals and a of scrap of legal paper that Lee count County sheriff's deputies seized in April 2007.

Potential evidence derived from those journals now also could be invalid.

Deputies searched Bicker-

* * *

[*Newspaper Replica*]

Former Boy Scout leader to have next hearing Sept. 4

JOURNALS

CONTINUE FROM A1

Rolfe Ehrmann, Bickerstaff's lead defense attorney, praised Pemberton's decision and said his ruling demonstrates a commitment to privacy protections and the U.S. Constitution.

"We just had a court rule whether the Constitution allows a piece of evidence in a court of law. That's what we want the courts to rule on," Ehrmann said. "That's law enforcement in action."

Paul Whitcombe, Lee County state's attorney, said the ruling will have little overall impact on his case, and that Pemberton "did an excellent job of taking into account all sides of the argument."

Whitcombe also lauded sheriff's deputies for offering an accurate narrative of the search, a story that would have been easy to mischaracterize and bend in their favor.

"It would have been very easy for them too [sic] have testified just a little bit differently, and [the . . . life, such as the daily weather and breakfast choices, Ehrmann said. He is now considering whether more of the state's case should be called into question.

With the first notebook in hand, officers expanded their search and found five more journals, all of which opened new leads in the ongoing investigation.

Evidence derived from Bickerstaff's illegally seized writings also could be unconstitutional, Ehrmann said.

"It remains to be seen whether police based their investigation on the journals or if they found some things with other techniques," Ehrmann said. "Unfortunately, I do not have access to the methods they used in the investigation."

This is the first time in his career as a defense attorney that the issue has come up, he said.

"I've been practicing law for 30 years, and this is the first time I think I've come across a case that actually deals with fruit of the poisonous tree."

Bickerstaff has pleaded not guilty to four counts

* * *

EXHIBIT B

Candidates Forum, October 8, 2009

Opening Comments of Henry Dixon at 14:19.5 to 15:08.2

I will thoughtfully draft correct and correctly draft court documents, such as search warrants, complaints for search warrants which will give the officers the latitude they need and they are entitled to have. Mr. Whitcombe doesn't. And I give you an example of People v Bickerstaff 07 CF 179 in which the Telegraph reported that it was a botched search. Sheriff Varga you never should never have stood up and said nothing. Because it was not a botched search. Your cops did the right thing. It was a botched search warrant and Mr. Whitcombe drafted that warrant. These are acts of conduct that I just cannot tolerate.

Paul Whitcombe re: case management system

Mr. Dixon knows very well, I cannot comment on pending cases, Mr. Dixon has cited a number of cases, he mispronounced each one of their names, but the important thing is he's making comments about pending cases, if he should be elected State's Attorney, that case is gonna have to be moved out of his office because he's commenting about the likely guilt of pending cases. The very thing he accuses me of doing.

---

saukvalley.com

Serving Dixon, Sterling & Rock Falls

Candidates hash it out

Whitcombe, Dixon differ on view of appropriate police relationships

BY SAM SMITH
SSMITH@SVNMAIL.COM
800-798-4085, EXT. 525

DIXON – The race for top prosecutor in Lee County may hinge on one issue: What type of relationship should a state's attorney have with law enforcement?

That theme emerged time and again at Wednesday's debate as a fundamental difference between first-term Republican incumbent Paul Whitcombe, 41, and Democratic challenger Henry Dixon, 72.

Dixon, a retired Army colonel who served one term as Lee County state's attorney from 1964-68, maintains Whitcombe has gotten too cozy with police and said, "What Mr. Whitcombe really wants to be is a cop – not a state's attorney."

Whitcombe counters that strong relationships with police have contributed to decreased gang and drug activity and that every law enforcement administrator in Lee County has endorsed him.

"Mr. Dixon obviously doesn't realize the state's attorney is the chief law enforcement officer in the county," Whitcombe said. "I'm proud of the relationship I have developed. I will not back off that."

At the heart of Dixon's complaint is that coddling law enforcement allows shoddy police work and diminishes the overall level of justice.

He points specifically to Whitcombe's Strike Force and Ride-Along program, a policy of arming state's attorneys who accompany law enforcement on drug raids.

"Justice is not riding around at 3 a.m. with your buddies. Not strapping your gun on and grabbing your camera and kicking down doors," Dixon said.

Among a handful of others, Dixon pointed to the Charles L. Bickerstaff case, a high-profile sexual assault case that has yet to go to trial because a judge recently tossed a cache of state's evidence seized during an unconstitutional search of Bickerstaff's Dixon home.

Dixon said "a botched search warrant" was the cause for delay and challenged Lee County Sheriff John Varga, who was in the audience and whose officers conducted the search, to criticize Whitcombe:

"You should never have stood by and said nothing. It wasn't a botched search. It was a botched search warrant."

Whitcombe said he stands on his record over his 4-year administration and won't be pigeonholed on a few cases that didn't work out as he'd hoped.

"I made four promises to you . . . and I have fulfilled those promises," Whitcombe said. Those pledges were to restore broken relationships with law enforcement, reverse the "bad-check epidemic," eliminate drug dealers and seek treatment for drug users.

"All around us, the world is burning. Our surrounding counties are on fire with gang violence, drug use and crime. But you won't find that here in Lee County," Whitcombe said.

He points to alternative courts and police relationships as the source of his administration's self-described success.

Through the recently developed drug court for addicts and petty offenders, "we've been able to take people whose lives would be ruined by a single mistake and turn them into productive citizens."

Dixon points to Whitcombe's record with jury trials and accused the incumbent of being "soft on crime."

"I have tried 266 jury trials . . . and 77 as state's attorney," Dixon said, "Mr. Whitcombe, you've tried three. Why? Because you give away the farm."

Whitcombe countered that prison isn't always the highest form of justice.

"When you go to the Department of Corrections, you don't get corrected. You learn to be a bigger, badder, more sophisticated criminal," Whitcombe said. "Justice does not always require a conviction."

The candidates

Incumbent: Republican Paul Whitcombe, 41, a former private attorney and public defender, is wrapping up his first term as state's attorney.

Challenger: Democrat Henry Dixon Sr., 72, a criminal lawyer and retired Army colonel, served one term as state's attorney from 1964 to 1968.

EXHIBIT C

saukvalley.com

Serving Dixon, Sterling & Rock Falls

Web site slams Whitcombe's administration

State's attorney denies election opponent's online accusations

BY SAM SMITH
SSMITH@SVNMAIL.COM
800-798-4085, EXT. 525

DIXON – Incumbent Lee County State's Attorney Paul Whitcombe says there's little truth – and a lot of mean spirit – to Web site postings made recently by his challenger, Henry Dixon.

Last week, the 72-year-old Democrat, a one-term prosecutor during the Vietnam War, launched www.paulwhitcombe.com with the intention of dissolving the tough-on-crime image Whitcombe cultivates. The site also highlights activities within Whitcombe's office that Dixon considers "unprofessional" and "unethical."

Called "The Truth About Lee County State's Attorney Paul Whitcombe," Dixon's Web site slams the Republican Whitcombe's administration and levies a series of attacks.

Dixon said he chose the domain name to "reach as many people as I could, to show them what Paul's office has been up to over the past 4 years."

Whitcombe, 41, flatly denies many of Dixon's assertions.

"There's a lot on there that's just false, and it's unfortunate that he decided to use my name," Whitcombe said. "But it's a free country, and we shouldn't try to stop him from using that avenue of communication."

In an interview Wednesday, Dixon offered documentation in support of his campaign statements that Whitcombe has "failed to prosecute, time and again, some of the toughest cases." (Most of the public documents came from the circuit court clerk and county treasurer.)

Those cases, which are summarized online, include:

n Jeffrey Danekas, the 35-year-old Dixon man who police say was high on cocaine and marijuana when his SUV slammed into Dixon teacher Andrea Fox's car, killing her almost instantly.

The terms of his plea deal to charges of reckless homicide with a motor vehicle required him to work at his father's roofing company during the day and report to the Lee County jail every night for 180 days.

n Charles Bickerstaff, the 57-year-old Boy Scout administrator accused of multiple rapes of an Ogle County boy at Bickerstaffs Dixon home.

Defense attorneys recently won a major victory when a judge ordered a series of potentially damning journals tossed from state's evidence because the search of Bickerstaff's home went beyond the scope of a search warrant Whitcombe drafted.

"It was not a botched search; it was a botched search warrant," Dixon said in the interview.

In defending the Danekas plea, Whitcombe said forensics results were inconclusive about Danekas'

sobriety at the time of the accident, and Illinois State Police experts would not testify against him.

"There's a very good chance Danekas could have been acquitted," Whitcombe said. "A jury could have ruled it was entirely an accident, and Danekas would have gotten nothing more than a ticket."

Whitcombe declined to comment on the Bickerstaff case, citing ongoing litigation.

"The decision-making that goes into these cases is very complex, and it can't be reduced to a 2- or 3-minute sound bite, and it's very easy to pick at these things without knowing all the details."

The court cases Dixon cites have paper trails in various court and law enforcement records, but some of the attacks on Whitcombe's conduct are couched in cautious language and would be difficult to verify without a formal investigation of the state's attorney's office.

It's an emerging consequence of self-publishing on the Internet, which often cuts out the fact-checking step involved in talking with reporters and affords political candidates an opportunity to post printed material with a bent similar to paid advertising – like the one-sided campaign ads that air during election season.

Bill Cassidy, an assistant professor of communication and journalism coordinator at Northern Illinois University, said it's no surprise that the Internet has

penetrated political campaigns over the last few years.

"I think obviously we're seeing, at the national level, that the Internet and related content, such as blogs, are playing an ever-increasing role in politics. In some ways, it makes sense that it would 'trickle down,' if you will."

Private Web sites, social networking sites and political blogs and journals have been ubiquitous for the last two presidential races, Cassidy said.

But sites like Dixon's may represent new trend in state and municipal elections.

"We've seen, in the presidential race, if someone says something, the other person is immediately refuting it on their Web site. Maybe this is becoming a tactic in politics when we get down to [local] races."

Such easy-access to campaign information can interfere with voters' access to unbiased information, Cassidy said. But in the end, readers need to research those allegations themselves.

"We have so much access to so much information, but with the great latitude comes great responsibility. The onus falls on the reader to discern whether this information is credible."

Such questionable information includes the installation of an exercise room in the Lee County Services Building, where the State's Attorney's Office is located,

and allowing the fourth-floor law library to become a "daycare center."

Dixon alleges Whitcombe did both, "at the expense of your tax dollars."

Whitcombe said most of the workout equipment pictured on Dixon's Web site was bought with Whitcombe's own money. He had County Board permission to install the weights, and the rest of the equipment was donated by others who work in the building, Whitcombe said.

"If somebody wants to go in there and exercise, it's better for everybody," Whitcombe said.

He occasionally brought his young children to work when regular daycare providers were unavailable and he needed to be in the office, Whitcombe said.

The candidates' Web sites

http://www.paulwhitcombe.com –

Dixon's anti-Paul site

http://www.whitcombe2008.com –

Whitcombe's official campaign site

http://www.henrysdixon.com –

Dixon's official campaign site

Chase Castle contributed to this report.

southdakota wrote on **Sep 26, 2008 1:23 PM:**

"First of all, Paul has done ALOT when it comes to sex offenders! I've seen him work diligently on it. Maybe not every case gets won . . . but there are alot of factors, evidence, tesimonies, EVERYONE doing their job right (investigating, interrogating, etc). Second who the heck cares if the kids are in the office?!!! Since when is family values a bad thing? And who cares if the character batman is a character he idolizes . . . he fights crime, Would you rather he idolize the joker? We all have our heros and those we put on a pedastak [sic]. As for myspace . . . you must be over 40 if you have a problem with that . . . oh wait, my mom has one and she's 57, It's a new age people and myspace is one of the new medias. You wan't [sic] the younger generation to get into the politics then you gotta be on their media . . . and that's myspace. Quit being petty. Dixon's whole campaign is on bashing Paul . . . seems to me it's only cause he has nothing more to offer himself!!! As for the workout equipment . . . my office [sic] as an entire workout room in it – I know many factories that offer it. Nothing wrong with it, especially if the employees donated the equipment to the office. Who cares if they work out during their breaks . . . not like they get many. I forget what conformist people back home are. Some one stands on a soap box and you all become drones. Be realistic..think for yourselves. Realize the world we live in."

hohum wrote on **Sep 23, 2008 2:05 PM:**

"a . . . granny,

sorry, but holding a jewelry party on company time in a SA office is not kosher. And sending an invitation with your county email for a response, is just plain stupid! It's not the most horrific thing that has ever happened, to be sure, but it's ethically wrong. For me, having two challengers to the Whiteside State's Attorney's office praise to the hilt the current SA, pretty much says it all."

hmhm wrote on **Sep 22, 2008 3:33 PM:**

"what has paul whitcombe really done for lee county? anything besides puttin all the teens in town in jail? has he really gotten sex offenders off the streets? no of course not he got most of the innocent ones off the street . . . as for all the stuff henry said about him well yes its true, and henry has evidence to back it up.. paul thinks he is the right hand of god . . . and can do anything he pleases . . . well he needs to think again, go ahead when paul walks up to your door ask him why he has his children playin in the law library or ask him why he idolizes batman like he is a god"

alyzasgranny wrote on **Sep 17, 2008 12:42 AM:**

"To Interesting, What is wrong with having a my space page? It's a great way to communicate it just depends on how you use it and for your information some of those pics were never on Whitcombes my space page. To hohum The jewelry party was held during those times so people could stop in during

their lunch hour which happens in many places of employment I'm sure it never affected anyones work and the comments about county time – Most of these people are salaried and work well above their salaried times and at all hours To odear WELL SAID Go Whitcombe keep up the great work and the clean campaign Thanks for telling the voters what you have acomplished and what your future plans are."

odear wrote on **Sep 15, 2008 9:55 PM:**

"Restore maturity? Does Mr. Dixon mean his own age because I don't think he means it any other way. Is there anyone else out there that wonders how or why Mr. Dixon would think to get ahold of Mr. Whitcombe's website and changed it like he did? Maturity? I don't think so. I think he just is mad about the 2004 election in which his wife was beaten. Otherwise, if he enjoyed the position of state's attorney the last time or was good at it, he would have stayed more than one term. What is up with that? I also have heard that it is not easy to buy or sell drugs in Lee County right now. Mr. Whitcombe and the police departments are doing a great job. Mr. Whitcombe has my vote and the vote of many."

hohum wrote on **Sep 15, 2008 9:34 PM:**

"I went to the website and magnified the invitation to the jewelry party held at the state's attorney's office from 11:30-1:30. The party was sponsored by Amy Huffman! selling jewelry from her mom's store! and listing her government employee email for more information! That's what Gov. Palin took out the head

of the Alaskan GOP and fellow oil commission member over (of course, she was caught doing the same thing in 2006 – but that is beside the point). Amy Huffman is running to bring change to the Whiteside county state's attorney's office? Sam, where's the story on this? Lee County Board, where's the reprimand?"

flair wrote on **Sep 15, 2008 8:17 PM:**

"Some people just can't handle it that Henry has exposed the incumbent's lack of respect for the jurisprudence of the Court. Henry will get my vote on November 4th! Henry will not spend taxpayers' money foolishly!"

interesting wrote on **Sep 15, 2008 1:29 PM:**

"I just tink it is insane that our state's attorney is putting up pictures on myspace. Doesn't that seem strange or weird to anyone else? Some of those pictures that were taken were on county time also! Don't bash Henry for putting it out in the open. I think that as tax payers we have a right to know what our money is going towards,"

alyzasgranny wrote on **Sep 13, 2008 5:06 PM:**

"Wow 2 things in the same paper about Paul Whitcombe I'm beginning to think the telgraph [sic] is bias maybe they should look at both canidates [sic] Oh yea I forgot Paul doesn't work that way he's running a clean campaign"

Boppa wrote on **Sep 13, 2008 1:47 PM:**

"I have long considered Henry Dixon a friend, but I have had my eyes opened with the manner in which he has sought the office of States Attorney! At the very least, I am sadly disappointed in his tactics! It appears to me that he is carrying out a vendetta against Paul Whitcombe who had the audacity of defeating his wife in the previous election! "Restore Maturity?" I'd say Henry's tactics are more reminiscent of prepubescent school yard spats! For his part, I commend Paul for "taking the high road" and speaking about the issues, and not delving into personal attacks!

I too have long waited for an explanation about the cyanide chips deal. I think the voting public deserves a response to that question."

nemesis wrote on **Sep 13, 2008 12:01 PM:**

"I have been waiting twenty-odd years to hear Henry explain how he, an attorney, wrangled the multi-million dollar cyanide plastic chip job via a Cook County Democrat judge who simply declared himself to have jurisdiction in this Lee County clean up "problem."

States Attorney Stockton had already had inquiries from people actually in the business of such disposal and recycling. Only days later, the Democrat judge mysteriously jumped in and put Henry, our current Mayor of Dixon, and an engineer from Whiteside County in charge of the job.

The bankruptcy of this partnership not long after also raises many questions of how Henry "handled" his own end of it. Slick Willy would be proud of Henry's aplomb. "

Ed wrote on **Sep 13, 2008 8:52 AM:**

"Well if thats the way he wants to run his campaign, thats his right.

The incumbent should also be able to bear the scrutiny of the public eye.

That being said, I think SOME of the allegations are pretty petty.

While other allegations should give people pause to support this candidate.

So its up to each person to judge for themselves the merits of each person running for office."

alyzasgranny wrote on **Sep 13, 2008 6:05 AM:**

"This is just an example of the way that Henry Dixon has run his whole campaign never saying what he would do only trying to bash whitcombe. maybe because he wouldn't be the one running the office his wife would and thats why he's running because she couldn't beat Paul herself. Next time you see Henry ask him if he's willing to only take 1 or 2 vacations a year and to stay away from the country club to be a 24/7 States Attorney the way Paul has."

EXHIBIT D

saukvalley.com

Servicing Dixon, Sterling & Rock Falls

Bickerstaffs lawyer wants case removed

Motion claims state's attorney's race affected chances for fair trial

BY SAM SMITH
SSMITH@SVNMAIL.COM
800-798-4085, EXT. 525

DIXON – The attorney for alleged child sex offender and former Boy Scouts leader Charles L. Bickerstaff has asked that the 17-month old case be moved out of Lee County.

Attorney Rolfe Ehrmann's written motion, filed with the Lee County circuit clerk on Monday, charges that in the eyes of the public, state's attorney candidate Henry Dixon has convicted Bickerstaff along the campaign trail and therefore denied him any chance of a fair trial.

"The public statements of Dixon implied both the defendant's guilt and that the materials suppressed by this court . . . would have established the guilt of Bickerstaff," Ehrmann's motion read. "He therefore respectfully requests that the court grant his motion to change the place of trial."

Dixon disputes that claim.

Throughout his campaign, Dixon has invoked the name "Charles Bickerstaff," perhaps more than any other, as a case for which voters must hold Paul Whitcombe accountable.

Whitcombe has had difficulty defending his record on this – and a handful of other open files – because the Illinois Supreme Court enforces sweeping restrictions on what prosecutors may say about pending trials.

Dixon, a Democrat, came out sniping at Whitcombe for "a botched search warrant" in the Bickerstaff case and has repeated this phrase at public debates, in print, campaign literature and online.

"I never said anything about Bickerstaffs guilt or innocence," Dixon said. "When the state's attorney drew the search warrant, he didn't do it properly."

Ehrmann, a Republican who challenged and lost to sitting Judge Dan Fish in the February primary elections, said there were no political motivations to filing 2 weeks before Election Day.

"I'm trying to keep this on a legal level," Ehrmann said.

The only reason for filing when he did was the time-sensitive nature of the case. Bickerstaffs next hearing is scheduled for Nov. 14, 10 days after the General Election.

"[Bickerstaff] has complained to me that his name is being used" in Dixon's campaign, Ehrmann said. "Can you imagine sitting in jail and you're reading the

newspapers and you see a candidate using your name and implying you're guilty . . . and you haven't even had your day in court?"

Whitcombe said Dixon's campaign strategy not only makes it difficult to defend himself – Illinois Supreme Court rules restrict what prosecutors can say about open cases – the election plank could make it impossible for Dixon to pick up prosecution of Bickerstaff if he wins.

"When my opponent uses pending cases in his campaign, I can't defend myself," Whitcombe said. "How could he argue in front of a jury that Mr. Bickerstaff should be declared guilty when he has been on the record as calling the case botched?"

Dixon responded by saying it should not take that long to prosecute.

"I just assumed he and Mr. Ehrmann would have this case resolved. If they can't get it resolved in one and a half months, I'd have to consider what Paul said."

Bickerstaff case history

April 2007: Lee County State's Attorney Paul Whitcombe charged Bickerstaff with eight counts of child sexual assault in connection with a 13-year-old boy.

May 2007: A second individual alleges child sexual assault, and Whitcombe brings seven more charges,

including one count of class X felony predatory criminal sexual assault with a potential 60-year prison term.

August 2008: Judge Stephen Pemberton tosses from potential evidence a series of Bickerstaffs personal journals. The judge rules Lee County sheriffs deputies seized the journals outside the scope of a warrant drafted by Paul Whitcombe. (The warrant has been removed from the case file and entered into trial evidence, thereby making it unavailable for public review.)

September 2008: Prosecutors and defense attorneys enter into plea agreement talks.

October 2008: Plea talks break down and both sides prepare for trial.

EXHIBIT E

saukvalley.com

Serving Dixon, Sterling & Rock Falls

Dixon blasts venue motion

BY SAM SMITH
SSMITH@SVNMAIL.COM
800-798-4085, EXT. 525

DIXON – State's attorney candidate Henry Dixon has accused attorney Rolfe Ehrmann of politicizing a high-profile case in an attempt to bolster fellow Republican and incumbent prosecutor Paul Whitcombe.

Ehrmann represents former Boy Scout leader Charles L. Bickerstaff of Dixon, who's charged with sexually abusing two boys. He filed a motion last week seeking a change of venue, saying his client could not get a fair trial in Lee County because Dixon, a Democrat, has made public statements implying Bickerstaff is guilty.

The timing of his motion happened to coincide with elections and wasn't a result of them, Ehrmann said.

"This is a very serious class X felony, and I'm going to represent my client, period," Ehrmann said. "I have no comment on the politics. As a defense attorney, I don't care whether people vote for Henry or for Paul. I'm not in the middle of that campaign."

Bickerstaffs prosecution has stalled in part because Judge Stephen Pemberton disallowed use of journals that investigators said contained passages describing Bickerstaff in a variety of sex acts with his underage accusers. The parameters of the search warrant did not give deputies the right to seize the journals, the judge ruled.

To Dixon, the case is synonymous with sloppy states attorney's work: He maintains that the sheriff's deputies did nothing wrong, that the problem was an inadequate search warrant, which he says was the responsibility of Whitcombe.

"I simply and directly asserted that it was incorrect to refer to the search in the Bickerstaff case as a 'botched search.' It was a botched search warrant," Dixon said.

In his motion filed last week, Ehrmann wrote, "Mr. Dixon has implied both the defendant's guilt and that the materials suppressed by this court would establish the guilt of Bickerstaff."

The motion goes on to say, "Henry S. Dixon has conducted a campaign in Lee County using Bickerstaff as a political device to obtain office, and as an object of scorn and ridicule, as if Bickerstaff were in fact guilty."

Dixon disputed Ehrmann's argument and said there's a world of difference between calling on Whitcombe to take responsibility for a warrant and calling the case botched.

The warrant wasn't written by Whitcombe, although he said he accepts responsibility because it comes through his office before going to a judge for signature. He said he has hesitated to point out that the warrant wasn't his because "I didn't want to throw someone else under the bus."